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Notice of Allowability

Application No.

10/698,912

Examiner

N. Bhat

Applicant(s)

GLASSBERG ET AL.

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE of March 6, 2006.
2. ☒ The allowed claim(s) is/are 1-3, 4-6, 10-16, 18-21 and 23-25 re-numbered as 1-18 respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-~~3~~4-6, 10-16, 18-21 and 23-25 drawn to a food composition, classified in class 426, subclass 590 or 565.

II. Claim 26, drawn to a child's play set, classified in class 446, subclass 475.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a materially different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the composition has separate utility and does not require the toy play set to make the product, the product can be made by hand and can be made using conventionally known and recognized mixers and need not be a toy.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

5. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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6. During a telephone conversation with Mr. Anton Skaugset on May 12, 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claim 26 has been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8. Action on the merits of claims 1-25 follows:

9. The following is an examiner's statement of reasons for allowance:

The invention is relates to a child safe reconstitutable milkshake, smoothie beverage, fondue or sorbet by the addition of water at or below room temperature without heating the composition includes specific amounts and ingredients comprising sugar, lactic acid, gum blends, sodium alginate, non dairy creamer, dry milk powder, maltodextrin, modified food starch, nonfat dry milk powder, guar gum in specified amounts as set forth in the claims. Reconstitutable food composition are per se known however the instant claimed composition even without the ranges and amounts of specific ingredients as not been found. The specific ranges and amounts of ingredients as claimed has not been taught nor fairly suggested either singularly or in combination by the prior art.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mehansho et al. teaches reconstitutable beverage composition and powder mixes which include sugar, non fat dry milk however, the acids, modified starches and guar gum etc. has not been taught the ranges are outside of applicant's compositional ranges. Note Examples I-VII. Weinstein teaches a process and preparation of frozen confections and food mixes for making ice cream, ice milk and sherbet. Dolan et al. teach a dry chocolate flavored beverage mix comprising 2-13% cocoa powder, 40-60% particulate sugar, 3-5% caramel powder, about 20% malt extract 0.25-1% flavor enhancing salt, 10-32% powdered non-dairy creamer, thickening agent which includes guar gum. Dolan is the closest prior art to applicant's invention however, the ranges are outside of applicant's claimed range, there is no lactic acid or maltodextrin included in the compositions taught by Dolan. Dolan does not meet any of the 4 compositions as claimed.

11. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with Mr. Skaugset on May 12, 2006.

The application has been amended as follows:

In the Claims:

Delete Claim 26 without prejudice.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat
Primary Examiner
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